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November 20, 2014

By ECF

Hon. John G. Koeltl
United States District Judge
United States District Court
Southern District of New York
500 Pearl Street
New York NY 10007

A CONFERENCE IS ALREADY
SCHEDULED FOR THURSDAY,
DECEMBER 4, 2014, AT 4:30PM
SO ORDERED.
11/21/14 [Signature] S D J

Re: Bretillot v. Burrow et al 14-CV-7633 (JGK)

Letter motion for pre-motion conference to dismiss complaint

Dear Judge Koeltl:

We are the attorneys for defendants Clive Burrow and Urban Cart Inc. Pursuant to Your Honor's rules we respectfully request a pre-motion conference in connection with a motion pursuant to Fed. R. Civ. P. 12(b)(6) to dismiss the amended complaint insofar as it relates to "other works" not the subject of completed copyright registrations.

During the pendency of this suit, plaintiff appears to have filed additional applications for registration of additional works, beyond the one work mentioned in the original complaint. The first paragraph of the plaintiff's amended complaint states: "This is an action for copyright infringement of a Map image registered with the United States Copyright Office, *and of other images whose registration is currently pending*, brought pursuant to the federal Copyright Act of 1976, as amended, 17 U.S.C.A. §§101 et. seq. (italics supplied)" and paragraph 20 of the plaintiff's amended complaint states: "The Map was registered with the United States Copyright Office in accordance with Title 17 of the United States Code (hereinafter, the "Map"), and Bretillot owns the copyright in the Map, *as well as several additional works (hereinafter, "Other Works") which have been submitted to the Copyright Office for registration, and processing of the registrations for these Other Works are currently pending before the Copyright Office: the case numbers are Manhattan pad map #1-1415442898; Times Square map #1-1415442959; Broadway map #1-1415442990. A copy of registration certificate #VA 1-917-498 of the Map, effective date April 25, 2014, is attached as Exhibit "1."*" (italics supplied) The amended complaint goes on to refer to the "Other Works" in various contexts.

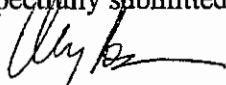
The inclusion of the unregistered copyrights is plainly contrary to law, and impermissible. 17 USC § Section 411(a) provides that, subject to exceptions not applicable to the instant case, "no civil action for infringement of the copyright in any United States work shall be instituted until preregistration or registration of the copyright claim has been made". It has been repeatedly held in this District that the mere filing of the registration application, without a certificate of registration having been issued, does not satisfy the registration requirement. See, e.g., *Small Business Bodyguard, Inc. v. House of Moxie, Inc.*, 2014 WL 5585339 (USDC SDNY October 31, 2014); *Christians of California v. Clive Christian New York*, 2014 WL 2465273 (USDC SDNY May 30, 2014); *Accurate Grading Quality Assurance, Inc. v. Thorpe*, 2013 WL 1234836 (USDC SDNY, 2013); *Patrick Collins, Inc. v. John Does 1-7*, 2012 WL 1889766, (USDC SDNY, 2012); *Muench Photography, Inc. v. Houghton Mifflin Harcourt Pub. Co.*, 2012 WL 1021535 (USDC SDNY 2012); *Drum Major Music Entertainment Inc. v. Young Money Entertainment, LLC*, 2012 WL 423350 (USDC SDNY 2012); *Psihoyos v. John Wiley & Sons, Inc.*, 2011 WL 4916299 (USDC SDNY 2011) *aff'd on other grounds*, 748 F.3d 120 (2d Cir April 4, 2014); *DO Denim, LLC v. Fried Denim, Inc.*, 634 F.Supp.2d 403 (USDC SDNY 2009).

The filing of a copyright application during the pendency of the lawsuit does not satisfy the registration requirement. *Psihoyos v. John Wiley & Sons, Inc.*, 748 F.3d 120 (2d Cir. April 4, 2014).

Accordingly, we respectfully request a premotion conference, or waiver of the premotion conference so that we may proceed to file the motion.

Thank you.

Respectfully submitted,



Ray Beckerman (RB8783)

cc: Barry R. Feerst, Esq. (By ECF)
Marc Illish, Esq. (By ECF)